IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 4952 of 1997

Between:

L.A.Sunil S/o.Andrews
R/o.Lakkireddypalli Cuddapah Dist

..... PETITIONER

AND

1 Bishop and Manager of the School CSIR, Dioces, Cuddapah
2 The Correspondent CSI High School, Cuddapah
3 District Educational Officer, Cuddapah
4 Regional Joint Driector of School Education Cuddapah (Region), Cuddapah Cuddapah Dist
5 The Commissioner & Director of School Education Government of Andhra Pradesh Saifabad, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to to issue writ of mandamus, declaring the inaction of the 1st and 2nd respondents in not releasing the petitioner's salaries for the period worked in the unaided post from 16/07/1990 to 13/08/1995 and the impugned proceedings of the 5th respondent rejecting to approve the petitioner's appointment and denying salaries for the period he worked as arbitrary illegal, ultravires, contrary to the Education Rules, violative of Art.14 and 21 of the Constitution of India and consequently direct the respondents 1 and 2 to pay his salaries from 16/07/1990 to 13/08/1995 and respondents 3 to 5 for the period from 13/08/1995 to 22/10/1996 and grant such other order.

Counsel for the Petitioner:MR.KASAJAGANMOHAN REDDY

Counsel for Respondent Nos.1&2: MR. P. IMMAYYA REDDY

Counsel for Respondent Nos.3 to 5:GP FOR SCHOOL EDUCATION

The Court made the following :

ORDER

This writ petition is filed by the petitioner praying to issue a writ of Mandamus declaring the inaction of the respondents 1 and 2 in not releasing the petitioner's salary for the period worked in the unaided post from 16.7.1990 to 13.8.195 and for the subsequent period, assailing the impugned proceedings of the fifth respondent dated 4.11.1996, under which, the proposals of the respondents 1 and 2 for absorption of the petitioner against the aided vacancy was rejected, as illegal and violative under the provisions of the Constitution of India, and consequently sought for a direction to the respondents 3 to 5 to pay salary for the period from 13.8.1995 to 22.10.1996.

According to the petitioner, he was appointed as a P.E.T. teacher in a non-sanctioned post on 11.7.1990 by the respondents 1 and 2. Later, the said post was sanctioned by proceedings dated 23.5.1992. It is the further case of the petitioner that the aided P.E.T. post fell vacant due to the leave availed by the incumbent for forty days from 5.2.1992 to 15.3.1992 and therefore, the petitioner was asked to work in the said post as per the proceedings of the second respondent under intimation to third respondent. It is further stated by the petitioner that he made several representations to the management for the release of his salary, but the management was promising to pay the same stating that proposals were sent for grant-in-aid and would pay after the release of the salary by the third respondent and according to the petitioner, he worked with the hope that he would get salary in future. Further, according to the petitioner, a selection committee, constituted as per the rules framed in G.O.Ms.No.1 dated 1.1.1994 had selected him and as per which, the fourth respondent approved the petitioner's appointment with effect from 12.6.1995.

While so, it is stated that one N.J. Bhaskar Rao, who originally appointed as Secondary Grade Teacher was converted as P.E.T. on 1.8.1992. As the said conversion was not approved by the respondents 4 and 5, the management re-converted him as Secondary Grade Teacher on 30.9.1994. But, however, later, the conversion of the said Bhaskar Rao was ratified by the fifth respondent on

20.11.1994. Therefore, the said Bhaskar Rao was again re-converted as P.E.T. and was transferred to another school at Madanapally by the management, but the said transfer was assailed by the said Bhaskar Rao in W.P.No.1982 of 1995. It is also the case of the petitioner that subsequently, the management recommended the case of the petitioner for absorption against aided vacancy as the appointment of the petitioner was already approved in view of the regular selection by the selection committee. But, however, in view of the irregularities committed by the management, the fifth respondent by proceedings dated 4.11.1996 rejected the proposal sent by the management for absorption of the petitioner against the aided vacancy of P.E.T. It is stated that the petitioner got the selection as P.E.T. under Zilla Parishad and left the services under the respondents 1 and 2 on 22.10.1996. It is only thereafter, the petitioner has come up with the present writ petition, which was filed in the month of March, 1997.

The learned counsel for the petitioner contended that though the petitioner worked from 1990 till 1996, he was not paid any salary, and though originally, the post was not sanctioned and was also not aided, still, as per the rules, the management is under obligation to pay the salary of the teachers appointed in an unaided and unsanctioned post. It is his case that even after sanction of the post, no aid was granted and it is only the management, which was responsible to pay the salary. But, however, after regular selection by the selection committee, the petitioner made a claim that the official respondents 3 to 5 have to pay the salary as the management had recommended the case of the petitioner for absorption against the aided vacancy, which was rejected by the fifth respondent under the impugned proceedings dated 4.11.1996. In any case, according to the learned counsel, as no salary was paid, it is obligatory on the part of the respondents, either the management or the official respondents, to pay the salary to the petitioner. Hence, sought the relief as prayed for.

Counter affidavit has been filed on behalf of the management-respondents 1 and 2, disputing and denying the claims of the petitioner. Though it is admitted that the petitioner was appointed in the year 1990 against an unaided and unsanctioned post, subsequently, the post was sanctioned by the appropriate authorities. Even then, as no aid was sanctioned, the petitioner was continued at his own request obviously, the petitioner wanted to get some experience so as to get appointment even elsewhere, if not absorbed against an aided vacancy. The learned counsel

also contended that this conduct of the petitioner is evident from his own affidavit where he has stated in para 5 that he worked with the hope that he would get salary in future. It was also stated that even as per the relief sought for by the petitioner, from 1995 onwards till 1996, the relief was sought against the official respondents and therefore, there was no obligation on the part of the management to pay any salary.

Official respondents 3 to 5 filed separate counter affidavit disputing and denying the claim of the petitioner. The stand of the official respondents was that the petitioner was appointed in unsanctioned post at the beginning and later though the post was approved, no aid was sanctioned. Therefore, there was no obligation on the part of the official respondents either to sanction or to release any salary from out of the Government funds. The learned Government Pleader also contended that the official respondents have no information or intimation even as to the appointment of the petitioner against unaided vacancy. Finally, it is stated that even when proposals were sent for absorption against aided vacancy, in view of the irregularities committed by the management, the proposal was rejected. Therefore, there was no obligation on the part of the official respondents to release or to pay any salary for the work done by the petitioner under the respondents 1 and 2.

From the above rival contentions, the issue to be considered is whether the petitioner is entitled for any relief as to the payment of salary and if so, which of the respondents are liable to pay the said salary.

Admittedly, the petitioner was appointed in the year 1990 as a P.E.T. teacher in an unsanctioned post. By that time, the respondents 1 and 2 have got an aided P.E.T. teacher post. In spite of it, even without obtaining prior approval, a post was created and the petitioner was appointed in the said vacancy. At the time of appointment, the petitioner also did not undergo even any selection process. It is only in the year 1995, a selection committee considered the claim of the petitioner and accordingly selected him, but even that selection was also against an unaided vacancy only. After the selection against an unaided vacancy, the petitioner's case was recommended by the management for absorption against aided vacancy, but due to the irregularities committed by the management as to the conversion and re-conversion of one N.J. Bhaskar Rao from the post of Secondary Grade teacher to the post of P.E.T. and again back to the Secondary Grade teacher and again the re-conversion of the said Bhaskar Rao as P.E.T. to another school without the

approval, the fifth respondent rejected the proposal sent by the management for absorption of the petitioner against aided vacancy. The result was that the petitioner was continued to be holding only unaided post in which case, the official respondents are not liable to release any salary.

With reference to the unaided post, it is only the management, who has to bear the expenditure. When the claim comes against the respondents 1 and 2, it was the stand of the respondents that the petitioner was appointed against an unsanctioned post originally at his request as the petitioner intends to gain experience for chances for regular recruitment. Further the petitioner's silence till he left the services also shows that there was an understanding between the petitioner and the management that he is not entitled to make any demand against the management, though under the rules if any one is appointed as a teacher in an unaided post, the management is under obligation to pay the salary. In fact, the order of appointment letter dated 11.7.1990 under which, the petitioner was appointed, shows that there is no reference even as to the salary to which the petitioner is entitled to. Even subsequently also there was no evidence showing that any demand made by the petitioner against the respondent-management. Further, in the affidavit also he has stated that he worked with the hope that he would get the salary in future. The stand of the management is contrary to the statutory rules and it is not open to the management to exploit the situation by availing the services of an unemployed without paying any salary. As the petitioner's services were availed, it is obligatory on the part of the management to pay the salary whatever be the amount as decided by the management. It is not open to the management to say that there is an implied understanding between the petitioner and the management that the petitioner would work without claiming any salary. Therefore, the respondents 1 and 2 are under obligation to pay the salary whatever be the amount to be decided by the management in accordance with the rules and the availability of funds with the management.

In the above circumstances, the writ petition is disposed of directing the respondents 1 and 2 to fix up the salary payable to the petitioner from the date of his appointment till he left the services on 22.10.1996 and pay the same within a period of four months from the date of receipt of a copy of this order. No costs.

S. ANANDA REDDY,J

10th September 2004

tsr.

To

1 Bishop and Manager of the School CSIR, Dioces, Cuddapah
2 The Correspondent CSI High School, Cuddapah
3 District Educational Officer, Cuddapah
4 Regional Joint Driector of School Education Cuddapah (Region), Cuddapah Cuddapah Dist
5 The Commissioner & Director of School Education Government of Andhra Pradesh Saifabad, Hyderabad

6. 2 C.C.s to G.P. for School Education, High Court Buildings, Hyderabad (O.U.T.)

7. 2 C.D. copies